

No. 12518

United States
Court of Appeals
for the Ninth Circuit.

TIGHE E. WOODS, Housing Expediter, Office of
the Housing Expediter,

Appellant,

vs.

JOHN S. BROWN,

Appellee.

Transcript of Record

Appeal from the United States District Court
for the District of Oregon.

FILED

JUN 16 1950

PAUL P. O'BRIEN,
CLERK

No. 12518

United States
Court of Appeals
for the Ninth Circuit.

TIGHE E. WOODS, Housing Expediter, Office of
the Housing Expediter,

Appellant,

vs.

JOHN S. BROWN,

Appellee.

Transcript of Record

Appeal from the United States District Court
for the District of Oregon.

INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

	PAGE
Answer	6
Clerk's Certificate	21
Complaint for Injunction and Restitution....	2
Designation of Record on Appeal.....	19
Findings of Fact and Conclusions of Law....	9, 14
Judgment	18
Memorandum of Decision.....	8
Names and Addresses of Attorneys.....	1
Notice of Appeal.....	19
Statement of Points on Which Appellant In- tends to Rely.....	20

NAMES AND ADDRESSES OF ATTORNEYS

C. E. KNOWLTON, JR.,

ROY C. FOX,

Office of Housing Expediter
905½ Third Avenue
Seattle 4, Washington,

Attorneys for Plaintiff.

McDANNELL BROWN,

Equitable Bldg.
Portland 4, Oregon,

Attorney for Defendant.

In the District Court of the United States
for the District of Oregon

No. 4366 Civ.

TIGHE E. WOODS, Housing Expediter,
OFFICE OF THE HOUSING EXPEDITER,
Plaintiff,

vs.

JOHN S. BROWN,

Defendant.

COMPLAINT FOR
INJUNCTION AND RESTITUTION

Comes Now plaintiff above named and alleges:

I.

That plaintiff is the duly appointed and qualified Housing Expediter, Office of Housing Expediter, an agency of the United States government, created by the Veterans' Emergency Housing Act of 1946 as amended (50 U.S.C.A. App. Sec. 1821 et seq.), and brings this action as such Housing Expediter pursuant to the Housing and Rent Act of 1947 (50 U.S.C.A. App. Sec. 1881-1902) as extended and amended by Public Laws 422 and 464 of the 80th Congress, hereinafter referred to as the Act.

II.

That jurisdiction of this action is vested in the above entitled Court under Sec. 206(b) of the Act.

III.

That at all times herein mentioned, John S.

Brown, has been the landlord and operator of two certain housing accommodations situated as follows, 2122-2126 S. E. Belmont, in the City of Portland, Oregon, and within the Portland-Vancouver Defense-Rental Area.

IV.

That in the opinion of the Housing Expediter, defendant has violated the provisions of the Act and of the regulations issued pursuant thereto, in that he has demanded, collected and received from tenants occupying the accommodations hereinbefore described, rentals in excess of the Maximum Legal Rentals fixed and established by law for such accommodations; that the overcharges herein complained of are as follows, to-wit,

1. That the accommodation situated at 2126 S.E. Belmont Street, Portland, Oregon, was occupied by Mrs. John Scoggan, as tenant, from and including the 1st day of May, 1948, to and including the 1st day of January, 1949.

(a) That the Maximum Legal Rent for said accommodation during the period above described was the sum of \$27.20 per month.

(b) That for each and every month of said occupancy, landlord John S. Brown, demanded and collected from Mrs. John Scoggan, the sum of \$35.00 per month, constituting an overcharge of \$7.80 per month or a total overcharge for said period in the amount of \$70.20.

2. That the accommodation situated at 2122 S.E. Belmont Street, Portland, Oregon, was occupied

by Mrs. Aubrey B. Brown, as tenant, from the 1st day of March, 1948, to and including the 1st day of January, 1949.

(a) That the Maximum Legal Rent fixed and established by law for said accommodation during said period was the sum of \$25.70 per month.

(b) That for each and every month of said period the landlord John S. Brown, demanded and collected from the tenant, Aubrey B. Brown, the sum of \$45.00 per month, constituting an overcharge of \$19.30 per month or a total overcharge of \$212.30.

V.

That plaintiff is informed and, therefore, believes and alleges that said landlord, John S. Brown, has continued to overcharge the two tenants above named, in the amounts as above stated, for rental subsequent to January 1st, 1949.

Wherefore Plaintiff prays:

1. For temporary and permanent restraining Order, restraining and enjoining the defendant, John S. Brown, his agents, employees, servants and associates, or anyone acting for or on his behalf, from demanding, collecting, receiving or retaining rentals for any of the housing accommodations situated at 2122-2126 S.E. Belmont Street, Portland, Oregon, in excess of the Maximum Legal Rentals fixed and established by law.

2. For an Order of Restitution, requiring and directing the defendant, to restore and repay to plaintiff for restitution to Mrs. John Scoggan the

sum of \$70.20, plus any additional overcharges made subsequent to January 1st, 1949.

3. For an Order of Restitution requiring and directing the defendant to restore and repay to plaintiff for restitution to the tenant, Mrs. Aubrey B. Brown, the sum of \$212.30, plus any additional overcharges made subsequent to January 1st, 1949.

4. Plaintiff further prays for his costs and disbursements herein.

5. Plaintiff further prays that in the event, or for any reason tenants above named are not entitled to restitution herein prayed for, that such restitution shall be made to the Treasurer of the United States.

Dated at Seattle, Washington, this 9th day of February, 1949.

/s/ C. E. KNOWLTON, JR.

/s/ ROY C. FOX,

Attorneys for Plaintiff.

/s/ FLOYD D. HAMILTON,

Assistant U. S. Attorney.

/s/ N. RAY ALBER.

Duly verified.

[Endorsed]: Filed Feb. 10, 1949.

[Title of District Court and Cause.]

ANSWER

For answer to Plaintiff's complaint, Defendant admits, denies and alleges as follows:

I.

Admits the allegations of Paragraph I.

II.

Denies all of the rest of the allegations contained in said complaint except as hereinafter admitted or alleged.

III.

Defendant affirmatively alleges that from a date prior to March 1, 1948, to and including November 30, 1948, he was the owner and landlord of the property located at 2122-2126 S. E. Belmont Street, in the City of Portland, Oregon, and within the Portland-Vancouver Defense Rental Area; that said property included four housing accommodations; that the property located at 2126 S. E. Belmont Street was occupied by Mr. and Mrs. John Scoggan as tenants, that shortly prior to July 1, 1948, Defendant determined that he would remodel said apartment, dividing the same up into two housing accommodations and so notifying the tenants, advising them that it would be necessary for them to vacate. Said tenants offered to pay the Defendant the sum of \$35.00 per month as rental on said premises and in further consideration of the Defendant's forbearing making the contemplated

alterations and evicting them; that thereafter from July 1 through November 30, 1948, Defendant would forbear making said alterations and would receive from the tenant, in consideration thereof and in payment of rent, the sum of \$35.00 for the months of July, September, October and November, 1948.

The premises located at 2122 S. E. Belmont Street were occupied from March 1, 1948, through November 30, 1948, by Mr. and Mrs. Aubrey B. Brown as tenants; that prior to March 1, 1948, said tenants offered to pay Defendant rental and to re-decorate the premises to suit their own tastes and desires, in aggregate value equivalent to \$45.00 a month; that Defendant accepted said proposition and between the dates of March 1, 1948, and November 30, 1948, did receive from the tenants the sum of \$. . . . in cash and said tenants did carry out certain decoration and alteration projects in said premises for which Defendant issued receipts in the amount of \$45.00 for each month.

IV.

On the first day of December, 1948, the Defendant sold said property to one Harry A. DeVries, by contract, a copy of which is on file herein with Defendant's request for admissions and it is by this reference made a part of this answer, and under the terms of said contract the purchaser H. A. DeVries is entitled to possession and control of the premises from and after December 1, 1948,

and Defendant has no right or interest therein except a security interest under said contract.

Wherefore, Defendant prays that Plaintiff take nothing by his complaint and that the same be dismissed.

Dated at Portland, Oregon, this 8th day of April, 1949.

/s/ McDANNELL BROWN,
Attorney for Defendant.

Duly verified.

Receipt of copy acknowledged.

[Endorsed]: Filed April 12, 1949.

[Title of District Court and Cause.]

MEMORANDUM OF DECISION

This case prays for "restitution" of \$70.20 to one tenant, \$212.30 to another, and for an injunction.

At the argument I asked able counsel for the Expediter a question that has been in my mind for some time. I asked him how the Expediter intended to enforce orders for "restitution," whether by execution, as on the usual money judgment, or by invoking the court's contempt power. He answered the latter. Since I consider this would be imprisonment for debt, which I abhor, the order for restitution is denied.

The defendant has sold the premises, so an injunction to control defendant's future conduct is

not needed. Some time ago I denied an injunction for the same reason in a Wages and Hours case. There the defendants had sold his sawmill. And see a decision in one of the recent advance sheets by Honorable John E. Miller, one of the United States District Judges for Arkansas.

Judgment for defendant for the reasons stated.

Dated June 15, 1949.

/s/ CLAUDE McCOLLOCH,
Judge.

[Endorsed]: Filed June 15, 1949.

[Title of District Court and Cause.]

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

This matter first came on for hearing before the Court without a jury on March 21, 1949, on defendant's motion to dismiss plaintiff's complaint, plaintiff appearing by his attorney of record, Roy C. Fox, defendant appearing by his attorney, McDannell Brown, and after hearing the arguments of counsel, the Court's decision was reserved; that thereafter, on March 31, 1949, the Court's decision on defendants' motion to dismiss plaintiff's complaint was reserved to time of pre-trial conference or trial.

Thereafter, this cause came on for hearing before

the Court on the 16th day of May, 1949, on plaintiff's motion for summary judgment, plaintiff appearing by his attorney, Roy C. Fox, defendant appearing by his attorney, McDannell Brown, and after hearing the arguments of counsel, the Court reserved its decision; that thereafter, the Court entered its Order on the 25th day of May, 1949, denying plaintiff's motion for summary judgment.

That thereafter, this cause came on for trial without a jury on June 6, 1949, plaintiff appearing by his attorney, Roy C. Fox, defendant appearing in person and by his attorney, McDannell Brown at which time, testimony of witnesses and documentary evidence were introduced and after hearing the arguments of counsel, the Court reserved its decision.

That thereafter on June 15, 1949, this Court rendered the following Memorandum of Decision:

“This case prays for ‘restitution’ of \$70.20 to one tenant, \$212.30 to another, and for an injunction.

“At the argument I asked able counsel for the Expediter a question that has been in my mind for some time. I asked him how the Expediter intended to enforce orders for ‘restitution,’ whether by execution, as on the usual money judgment, or by invoking the court's contempt power. He answered the latter. Since I would consider this would be imprisonment for debt, which I abhor, the order for restitution is denied.

“The defendant has sold the premises, so an injunction to control defendant's future conduct is

not needed. Some time ago I denied an injunction for the same reason in a Wages and Hours case. There the defendant had sold his sawmill. And see a decision in one of the recent advance sheets by Honorable John E. Miller, one of the United States District Judges for Arkansas.

“Judgment for defendant for the reasons stated.

“Dated June 15, 1949.

/s/ CLAUDE McCOLLOCH,
Judge”

That on or about the 29th day of July, 1949, plaintiff filed herein a motion to reconsider the Memorandum Opinion which said motion was argued on September 6, 1949; said motion to reconsider was by oral order of the Court denied November 25, 1949, and the Court having considered all matters and the testimony of witnesses and the arguments of counsel and being fully advised in the premises, now makes the following

Findings of Fact

I.

That plaintiff is the duly appointed and qualified Housing Expediter of the Office of the Housing Expediter, an agency of the United States Government created by the Veterans Emergency Housing Act of 1946 as amended and brings this action pursuant to the Housing and Rent Act of 1947 as amended.

II.

That jurisdiction of this action is conferred upon this Court by Section 206(b) of the Act.

III.

That at all times from the 1st day of March, 1948, to and including the 1st day of January, 1949, the defendant John S. Brown, was the landlord and operator of a certain controlled housing accommodation situated at 2126 S. E. Belmont Street and 2122 S. E. Belmont Street, in the City of Portland, Oregon, within the Portland-Vancouver Defense-Rental Area.

IV.

That the accommodation situated at 2126 S.E. Belmont Street, Portland, Oregon, was occupied by Mrs. John Scoggan as a tenant from and including the 1st day of May, 1948, to the 1st day of January, 1949; that during each and every month of said period, the defendant collected and received from said tenant for the use and occupancy of said accommodation, rental in the amount of \$35.00 per month; that the Maximum Legal Rent for said accommodation during all of said period was the sum of \$27.20 per month as established by law, constituting an overcharge of \$7.80 per month or a total overcharge for said period in the amount of \$70.20.

V.

That the accommodation situated at 2122 S.E. Belmont, Portland, Oregon, was occupied by Mrs. Aubrey B. Brown as a tenant from the 1st day of

March, 1948, to the 1st day of January, 1949; that during each and every month of said period, the defendant collected and received from said tenant for the use and occupancy of said accommodation, rentals in the amount of \$45.00 per month; that the Maximum Legal Rent for said accommodation during all of said period was the sum of \$25.70 per month, constituting an overcharge of \$19.30 per month or a total overcharge for said period of \$212.30.

VI.

That on or about the 1st day of December, 1948, defendant sold the properties situated at 2122 S.E. Belmont, and 2126 S.E. Belmont, Portland, Oregon, and made no collection of rental subsequent to the month of December, 1948, and that defendant is not now a landlord engaged in the business of renting housing accommodations, from which Findings of Fact, the Court makes the following

Conclusions of Law

I.

That plaintiff's prayer for restitution in the above case must be denied for the reason that the granting of restitution would constitute imprisonment for debt.

II.

That plaintiff's prayer for an injunction be denied for the reason that the defendant is no longer a landlord engaged in the business of renting housing accommodations.

Done in Open Court this 18th day of February, 1950.

/s/ CLAUDE McCOLLOCH,
U. S. District Judge.

Presented by:

/s/ ROY C. FOX,
Attorney for plaintiff.

[Endorsed]: Filed Feb. 18, 1950.

[Title of District Court and Cause.]

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

This matter first came on for hearing before the Court without a jury on March 21, 1949, on defendant's motion to dismiss plaintiff's complaint, plaintiff appearing by his attorney of record, Roy C. Fox, defendant appearing by his attorney, McDannell Brown, and after hearing the arguments of counsel, the Court's decision was reserved; that thereafter, on March 31, 1949, the Court's decision on defendant's motion to dismiss plaintiff's complaint was reserved to time of pre-trial conference or trial.

Thereafter, this cause came on for hearing before the Court on the 16th day of May, 1949, on plaintiff's motion for summary judgment, plaintiff appearing by his attorney, Roy C. Fox, defendant appearing by his attorney, McDannell Brown, and after hearing the arguments of counsel, the Court

reserved its decision; that thereafter, the Court entered its Order on the 25th day of May, 1949, denying plaintiff's motion for summary judgment.

That thereafter, this cause came on for trial without a jury on June 6, 1949, plaintiff appearing by his attorney, Roy C. Fox, defendant appearing in person and by his attorney, McDannell Brown at which time, testimony of witnesses and documentary evidence were introduced and after hearing the arguments of counsel, the Court reserved its decision.

That thereafter on June 15, 1949, this Court rendered the following Memorandum of Decision:

“This case prays for ‘restitution’ of \$70.20 to one tenant, \$212.30 to another, and for an injunction.

“At the argument I asked able counsel for the Expediter a question that has been in my mind for some time. I asked him how the Expediter intended to enforce orders for ‘restitution,’ whether by execution, as on the usual money judgment, or by invoking the court's contempt power. He answered the latter. Since I would consider this would be imprisonment for debt, which I abhor, the order for restitution is denied.

“The defendant has sold the premises, so an injunction to control defendant's future conduct is not needed. Some time ago I denied an injunction for the same reason in a Wages and Hours case. There the defendant had sold his sawmill. And see a decision in one of the recent advance sheets

by Honorable John E. Miller, one of the United States District Judges for Arkansas.

“Judgment for defendant for the reasons stated.

“Dated June 15, 1949.

/s/ CLAUDE McCOLLOCH,
Judge.”

That on or about the 29th day of July, 1949, the plaintiff filed herein a motion to reconsider the Memorandum Opinion which said motion was argued on September 6, 1949; said motion to reconsider was by oral order of the Court denied November 25, 1949, and the Court having considered all matters and the testimony of witnesses and the arguments of counsel and being fully advised in the premises, now makes the following

Findings of Fact

I.

That prior to the first day of December, 1948, defendant John S. Brown sold the properties situated at 2122 S. E. Belmont and 2126 S. E. Belmont, Portland, Oregon, the same being the properties referred to in the plaintiff's complaint; that since said first day of December, 1948, he has not been a landlord of said premises nor engaged as landlord in the business of renting housing accommodations.

From the foregoing Findings of Fact, the Court makes the following

Conclusions of Law

I.

That there is no basis or justification for the exercise of the equitable jurisdiction of this Court.

II.

That plaintiff's prayer for an injunction should be denied for the reason that defendant is no longer a landlord engaged in the business of renting housing accommodations, and such relief would therefore be futile and meaningless.

III.

That plaintiff's prayer for restitution should be denied for the reason that the defendant is no longer a landlord engaged in the business of renting housing accommodations and that such relief would exercise no restraining purpose on the defendant or serve any other equitable purpose, and for the further reason that enforcement of such a judgment by a contempt proceedings would result in imprisonment for debt, thus making this Court an instrument of inequity and injustice.

Done in Open Court this 18th day of February, 1950.

/s/ CLAUDE McCOLLOCH,
U. S. District Judge.

[Endorsed]: Filed Feb. 18, 1950.

In the District Court of the United States
for the District of Oregon

No. 4366

TIGHE E. WOODS, Housing Expediter, Office
of the Housing Expediter,

Plaintiff,

vs.

JOHN S. BROWN,

Defendant.

JUDGMENT

This matter was tried before the Court on the 6th day of June, 1949, without a jury, plaintiff appearing by his attorney of record, Roy C. Fox, defendant appearing in person and with his attorney, McDannell Brown, and the Court having heard the testimony of witnesses and considered documentary evidence introduced and having made and entered herein its Findings of Fact and Conclusions of Law and being fully advised in the premises,

It Is Ordered, Adjudged and Decreed that plaintiff's prayer for restitution in the above-entitled action be and the same is hereby denied.

It Is Further Ordered that plaintiff's prayer for injunction against defendant be and the same is hereby denied.

It Is Further Ordered that the above-entitled action be and is dismissed without costs to either party to which judgment plaintiff excepts and exception allowed.

Done in Open Court this 18th day of February, 1950.

/s/ CLAUDE McCOLLOCH,
U. S. District Judge.

[Endorsed]: Filed Feb. 18, 1950.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given that Tighe E. Woods, Housing Expediter, plaintiff above named, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the final judgment entered in this action on the 18th day of February, 1950.

/s/ ROY C. FOX,
Attorney for Plaintiff.

Service accepted.

[Endorsed]: Filed March 29, 1950.

[Title of District Court and Cause.]

DESIGNATION OF RECORD ON APPEAL

Appellant designates the following portions of the record and proceedings to be contained in the record on appeal in this action:

- (1) Complaint.
- (2) Defendant's Answer to Complaint.
- (3) Memorandum of Decision.

- (4) Findings of Fact and Conclusions of Law prepared by plaintiff, filed February 18, 1950.
- (5) Findings of Fact and Conclusions of Law prepared by defendant, filed February 18, 1950.
- (6) Judgment.
- (7) Notice of Appeal.
- (8) Statement of Points on which Appellant intends to Rely.
- (9) This Designation.

/s/ ROY C. FOX,
Attorney for Plaintiff.

Service accepted.

[Endorsed]: Filed March 29, 1950.

[Title of District Court and Cause.]

STATEMENT OF POINTS ON WHICH
APPELLANT INTENDS TO RELY

The point upon which appellant intends to rely

(1) on this appeal is as follows:

(1) The Court erred in denying plaintiff's prayer for restitution of rental overcharges in the above-entitled case.

/s/ ROY C. FOX,
Attorney for Plaintiff.

Service accepted.

[Endorsed]: Filed March 29, 1950.

CLERK'S CERTIFICATE

United States of America,
District of Oregon—ss.

I, Lowell Mundorff, Clerk of the United States District Court for the District of Oregon, do hereby certify that the foregoing documents consisting of Complaint for injunction and restitution, Answer, Memorandum of Decision, Findings of Fact and Conclusions of Law (2), Judgment, Notice of Appeal, Designation of Record on Appeal, Statement of Points on Which Appellant Intends to Rely, Transcript of Docket Entries, constitute the record on appeal from a judgment of said court in a cause therein numbered Civil 4366, in which Tighe E. Woods, Housing Expediter, is plaintiff and appellant and John S. Brown is defendant and appellee; that the said record has been prepared by me in accordance with the designation of contents of record on appeal filed by the appellant, and in accordance with the rules of this court.

In Testimony Whereof I have hereunto set my hand and affixed the seal of said court in Portland, in said District, this 7th day of April, 1950.

LOWELL MUNDORFF,
Clerk.

[Seal] By /s/ F. L. BUCK,
Chief Deputy.

[Endorsed]: No. 12518. United States Court of Appeals for the Ninth Circuit. Tighe E. Woods, Housing Expediter, Office of the Housing Expediter, Appellant, vs. John S. Brown, Appellee. Transcript of Record. Appeal from the United States District Court for the District of Oregon.

Filed April 10, 1950.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.